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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. KEVIN MARCEL CHATMAN, Defendant and Appellant.	A151425 (Contra Costa County Super. Ct. No. 5-160635-9)

Kevin Marcel Chatman was convicted of carrying a loaded unregistered firearm, possessing a firearm as a felon, and personally inflicting great bodily injury while resisting an officer. He argues there was insufficient evidence of personal infliction of great bodily injury; the trial court erred in failing to hold an evidentiary hearing on alleged juror misconduct; and Penal Code section 654[1] barred punishment for the firearm and resisting offenses. We reject these claims but will correct the abstract of judgment in a manner that does not alter Chatman's aggregate sentence.

BACKGROUND

A.

About 45 minutes after a reported drive-by shooting, Richmond Police Officers Enrik Melgoza and Jennifer Cortez saw a gold Oldsmobile they thought matched the suspect vehicle's description. When Melgoza and Cortez made a U-turn to follow in their marked patrol car, the Oldsmobile accelerated. After a high-speed chase, the

[1] Undesignated statutory references are to the Penal Code.

Oldsmobile stopped in a hospital parking lot. Melgoza and Cortez approached the Oldsmobile with guns drawn and ordered the car's four occupants to show their hands.

Chatman, a passenger in the Oldsmobile, climbed through a rear passenger window and tried to escape. Cortez attempted to restrain him, but he broke free and ran. During the struggle, Cortez felt a "pop" in her finger. She was later diagnosed with a fractured middle finger that required a pin and surgery and a broken ring finger that required a cast. Melgoza chased and tackled Chatman to the ground. Chatman was handcuffed and turned over to another officer to search him as he lay prone on the ground. Chatman squirmed and got to his feet as the officer tried to restrain him. A gun fell from Chatman's waistband. Chatman again broke free and fled. Melgoza gave chase and took him into custody.

Meanwhile, the other rear passenger of the Oldsmobile fled but was apprehended and taken into custody. A firearm was found by the seat where he had been sitting.

B.

Chatman (and the other three Oldsmobile occupants) were charged by felony indictment with active participation in a criminal street gang, "Deep C," and carrying a loaded unregistered handgun with gang enhancements (§§ 186.22, subd. (a), 25850, subd. (a), 186.22, subd. (b)(1)(A), 12021.5, subd. (b)). Chatman was further charged with possession of a firearm by a felon with gang enhancements (§§ 29800, subd. (a)(1), 186.22, subd. (b)(1)(A), 12021.5, subd. (b)), and personally inflicting great bodily injury on Cortez while resisting with force or violence (§§ 69, subd. (a), 12022.7, subd. (a)).

At trial, the prosecution theorized the defendants were members of Deep C, and specifically a Deep C subset called "GSF." Chatman denied that he was a member of the gang and testified that, on the night of his arrest, the group was just going home after playing video games at a friend's home. He admitted carrying a gun for protection and unlawfully possessing it in the Oldsmobile but denied his codefendants knew the gun was present.

C.

The jury acquitted all defendants of the gang charge and found all gang allegations not true. Chatman was found guilty of both gun charges, resisting Cortez with force or violence, and the great bodily injury enhancement was found true.

After denying Chatman's motion for new trial based on juror misconduct (discussed below), the court sentenced him to the low term of 16 months on the resisting charge plus three years for the great bodily injury enhancement, for a total principal term of four years four months. The court added a consecutive eight-month term (one-third the middle term) for carrying a loaded unregistered handgun, and pursuant to section 654 stayed the sentence on possession of a firearm by a felon without setting a term for that offense. The announced aggregate term was five years.

DISCUSSION

A.

Chatman argues there was insufficient evidence he personally inflicted great bodily injury within the meaning of section 12022.7, subdivision (a). We disagree.

Section 12022.7, subdivision (a), states that a person shall be punished for an additional three years if that person "personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony." Cortez testified that, after Chatman exited the car window and landed on the ground, she grabbed his sweatshirt with her left hand as she holstered her gun with her right hand. Chatman "popped up" and tried to get away by twisting his torso, swinging his arms, and pulling away and dragging Cortez as she continued to hold onto his sweatshirt. Chatman's elbows hit her shoulders and the sides of her arms, and she felt a pop to the middle finger of her left hand. Surprised, she lost her grip, and Chatman ran away. Police bodycam footage of the incident was played for the jury.

Chatman correctly notes that proximate causation alone is insufficient to establish that a defendant personally inflicted an injury under the statute. (*People v. Bland* (2002) 28 Cal.4th 313, 333–338.) The defendant must do something that causes an injury more directly, rather than something that merely sets in motion a chain of events that leads to

the injury. That causal connection was too remote in *People v. Rodriguez* (1999) 69 Cal.App.4th 341, where the defendant was fleeing on a bicycle, and a police officer was injured when he tackled the defendant and hit his head on the ground. (*Id.* at pp. 346, 352.) But the connection was sufficiently direct in *People v. Elder* (2014) 227 Cal.App.4th 411, where the defendant was attempting to flee from a robbery victim, who grabbed the defendant's sweatshirt and dislocated his finger as the defendant struggled to get away. (*Id.* at pp. 413, 420–421.)

As in *Elder*, the causal connection is sufficient here. If we focus on the defendant's actions, the difference between *Rodriguez* and *Elder* is, in the former case, the defendant rode away on a bike without any contact or struggle with the victim, whereas in the latter case, the defendant struggled with the victim as he tried to free himself from the victim's grasp. Chatman struggled with the victim by twisting, swinging his arms, pulling away, and dragging Cortez as he tried to free himself from her grasp. Cortez specifically testified her finger popped as Chatman was twisting to get away from her. The jury could reasonably conclude Chatman's actions directly caused Cortez's injury.

Chatman also argues the trial court erred by not instructing the jury sua sponte that proximate causation was insufficient to establish personal infliction. However, a trial court need not define "personally inflicts" when instructing the jury (*People v. Cross* (2008) 45 Cal.4th 58, 67–68 [statutory meaning does not differ from nonlegal meaning]), and it has no duty to provide a clarifying instruction absent a specific request (*People v. Mace* (2011) 198 Cal.App.4th 875, 882). Chatman notes the prosecutor did not distinguish between proximate cause and personal infliction in his closing argument, but neither did Chatman's trial counsel. It was a nonissue. The prosecutor noted the bodycam footage showed that Chatman twisted and dragged Cortez behind him. No further definition of "personally inflicts" was needed.

B.

Chatman argues that the court erred by denying an evidentiary hearing on juror misconduct and bias in response to his motion for new trial. The court did not err.

A defendant's motion for new trial based on jury misconduct requires the trial court to determine if admissible evidence establishes misconduct and if that misconduct was prejudicial. (*People v. Vigil* (2011) 191 Cal.App.4th 1474, 1483.) Evidence of jurors' mental processes, including statements made during deliberations that disclose jurors' mental processes, are inadmissible. (Evid. Code, § 1150, subd. (a); *People v. Hedgecock* (1990) 51 Cal.3d 395, 418–419.) A defendant is not entitled to an evidentiary hearing as a matter of right; he must produce evidence " ' "demonstrating a strong possibility that prejudicial misconduct has occurred." ' " (*People v. Peoples* (2016) 62 Cal.4th 718, 777.) We review the trial court's denial of an evidentially hearing for abuse of discretion. (*Ibid.*)

Juror 6 averred in a declaration that jurors made comments during deliberation suggesting a predisposition to convict the defendants; other jurors pressured her to vote guilty on Chatman's resisting charge; and Juror 7 had extrinsic information about Deep C that caused him to be biased against Chatman. The trial court denied an evidentiary hearing because, even assuming the admissible portions of Juror 6's declaration were true, no prejudicial misconduct occurred. We agree.

1.

Juror 6 claimed certain jurors prejudged the case or improperly considered punishment because they made the following statements in deliberations: the jury should "make this really easy and say across the board guilty"; defendants were "thugs" who should be "taken off the streets"; defendants looked like gang members; and Deep C was "like ISIS." Chatman cites no case law demonstrating such comments amount to juror misconduct. The comments are permissible expressions of frustration, temper, and strong conviction. (*People v. Engelman* (2002) 28 Cal.4th 436, 446.) Additionally, three other jurors described detailed examinations of the evidence during deliberations and discounted the significance of the stray comments cited by Juror 6.

2.

Juror 6 contended jurors pressured her to vote guilty on the resisting charge as follows: when she asked for clarification of the force or violence element, jurors

complained she was too "nit-picky," but the foreman still asked the court for clarification; when she asked for a readback of Cortez's testimony, jurors complained it would be too time-consuming; when she suggested a review of the bodycam footage, jurors made sarcastic remarks and called her a "cop hater"; at the end of one day of deliberations, jurors were "zoned out" and not deliberating with her; and on the fourth day of deliberations, jurors complained they were missing work or personal engagements because due to her disagreement on the resisting count.

These types of comments fall within the range of acceptable conduct during juror deliberations, which can sometimes be harsh, intemperate, and personal. (See, e.g., *People v. Keenan* (1988) 46 Cal.3d 478, 539–542 [shouted threat to kill a holdout juror, which caused juror to cry and vomit, was not prejudicial misconduct]; *People v. Engelman*, *supra*, 28 Cal.4th at p. 446 [vehement disagreement and expressions of frustration, temper, and strong conviction are expected in deliberations].) Moreover, three jurors stated the jury reviewed police bodycam footage repeatedly and discussed how the evidence satisfied the elements of the crime, and Juror 6 ultimately agreed the charge was proven.

3.

Juror 6 also said that, after the jury decided on its verdict and was waiting to return to the courtroom, Juror 7 commented he had direct contact through his work with Deep C gang members, including Sirdy Bernstine and others mentioned at trial; Deep C gang members taught him about "the criminal mind"; a coworker was Sirdy's right hand man; Sirdy was the older brother of a codefendant; Sirdy was recently killed while seeking revenge for a gang shooting; and Chatman was a bad guy and a thug.

This evidence was insufficient to trigger an evidentiary hearing. Chatman has not shown Juror 7 failed to disclose this information in response to specific questions asked in voir dire. (See *People v. Blackwell* (1987) 191 Cal.App.3d 925, 929.) Nor does Chatman claim he was improperly restricted from exploring potential jurors' biases in voir dire. (See *Jutzi v. County of Los Angeles* (1987) 196 Cal.App.3d 637, 654–655 [no misconduct where counsel failed to use voir dire to explore possible bias].) Juror 7's

comments were not made during deliberations, so matters outside the record were not introduced into deliberations. (Cf. *People v. Nesler* (1997) 16 Cal.4th 561, 578.) Juror 7's comments about Chatman being a thug and a bad guy may well have been based on the trial evidence, and any personal familiarity with the Deep C gang was part of his life experience that he could appropriately consider while assessing the case. (See *In re Manriquez* (2018) 5 Cal.5th 785, 812–819 [similarity between juror's childhood experience and defendant's mitigating evidence of childhood abuse, which juror discussed during deliberations, did not render juror biased].) Moreover, despite Juror 7's apparent disapproval of the gang, he voted with the rest of the jury to acquit all four defendants of the gang charge and gang enhancements.

Chatman failed to show a strong possibility of prejudicial juror misconduct that would warrant an evidentiary hearing.

C.

We reject Chatman's argument that section 654 barred the court from imposing sentence for both resisting an officer and carrying a loaded unregistered firearm.

Section 654 precludes multiple punishment if the offenses were " ' " 'merely incidental to, or were the means of accomplishing or facilitating one objective.' " ' " (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) However, "section 654 is inapplicable when the evidence shows that the defendant arrived at the scene of his or her primary crime already in possession of the firearm" and with a different intent. (*Jones*, at pp. 1145, 1147.) Here, Chatman testified at trial that he carried the gun for personal protection. Thus, he possessed the gun before he knew he would be pursued by police and with a purpose different from resisting the police.

D.

The trial court agreed section 654 barred dual punishment for carrying a loaded, unregistered firearm and possession of a firearm by a felon, and it declared the sentence on the possession count stayed without imposing the sentence. The People correctly observe the court should have imposed the sentence, then stayed it. (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1466.) We will order the abstract of judgment corrected to

reflect an eight-month consecutive term (one-third the middle term) for possession of a firearm by a felon, stayed pursuant to section 654. (See §§ 18, 1170.1, subd. (a), 29800, subd. (a)(1).)

DISPOSITION

The court is directed to correct the abstract of judgment to reflect an eight-month consecutive term for possession of a firearm by a felon, stayed pursuant to section 654, and send the corrected abstract to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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BURNS, J.

WE CONCUR:

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JONES, P. J.

_____
SIMONS, J.

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